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Attorneys for Defendants

OFFICER JESUS MARTINEZ and OFFICER KYLE GRIFFIN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MARIBEL MURILLO, individually and as
successor-in-interest Of The Estate of
deceased, JONATHAN MURILLO-NIX,

Plaintiff,

v.

CITY OF LOS ANGELES, a governmental
entity; JESUS MARTINEZ, individually;
KYLE GRIFFIN, individually; and DOES
1- 10, inclusive,

Defendants.

Case No. 22-cv-03188-DMG (SKx)

**DECLARATION OF KEVIN E.
GILBERT IN SUPPORT OF
DEFENDANTS' APPLICATION
PURSUANT TO LOCAL RULE 79-5.2
TO FILE EXHIBITS UNDER SEAL
IN SUPPORT OF DEFENDANTS
JOINT MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT
[REDACTED]**

1 I, Kevin E. Gilbert, if called upon to testify will competently testify as follows:

2 1. I am an attorney licensed to practice before this Court and am employed
3 with the law firm of Orbach Huff + Henderson, LLP, attorneys of record for Defendants
4 OFFICER JESUS MARTINEZ and OFFICER KYLE GRIFFIN (“Defendants”) in the
5 above-referenced matter. I have personal knowledge of the matters set forth herein below
6 and if called upon to testify will competently testify thereto.

7 2. The parties entered into a stipulated Protective Order, filed and entered by
8 this Court on June 9, 2023 (Dkt. 35). The Protective Order allowed the parties to disclose
9 otherwise protected and privileged records. The Protective Order provides, in summary,
10 that documents may be designated as “confidential” if they constitute official records and
11 information. The exhibits referenced below are official records from the investigation
12 maintained by the Los Angeles Police Department and were marked as confidential and
13 as such should be filed under seal.

14 3. Defendants respectfully seek an order authorizing them to file certain
15 privileged records under seal. The proposed exhibits to be filed under seal include the
16 following:

- 17 1. **Exhibit E** to the Declaration of Kevin Gilbert: A true and correct copy of
18 the video from Officer Jose Mendoza’s body-worn camera for the subject
19 incident.
- 20 2. **Exhibit F** to the Declaration of Kevin Gilbert: A true and correct copy of
21 the video from Officer Isaac Ipsen’s body-worn camera for the subject
22 incident.
- 23 3. **Exhibit G** to the Declaration of Kevin Gilbert: A true and correct copy of
24 the video from Officer Cesar Barba’s body-worn camera for the subject
25 incident.
- 26 4. **Exhibit H** to the Declaration of Kevin Gilbert: A true and correct copy of
27 the first video from Sergeant Francisco Alferez’s body-worn camera for
28 the subject incident.

5. **Exhibit I** to the Declaration of Kevin Gilbert: A true and correct copy of a video from Officer Nicholas Knolls' body-worn camera for the subject incident.
6. **Exhibit K** to the Declaration of Kevin Gilbert: A true and correct copy of another video from Officer Jose Mendoza's body-worn camera for the subject incident.
7. **Exhibit L** to the Declaration of Kevin Gilbert: A true and correct copy of the video from Officer Kyle Griffin's body-worn camera for the subject incident.
8. **Exhibit M** to the Declaration of Kevin Gilbert: A true and correct copy of the video from Officer Jesus Martinez's body-worn camera for the subject incident.
9. **Exhibit O** to the Declaration of Kevin Gilbert: A true and correct copy of the video from Officer Eric Schlesinger's body-worn camera for the subject incident.
10. **Exhibit P** to the Declaration of Kevin Gilbert: A true and correct copy of the video from Officer Marcos Gutierrez's body-worn camera for the subject incident.
11. **Exhibit Q** to the Declaration of Kevin Gilbert: A true and correct copy of the video from Officer Georgia Tykomyrov's body-worn camera for the subject incident.
12. **Exhibit S** to the Declaration of Kevin Gilbert: A true and correct copy of a still frame photo from the video from Officer Marcos Gutierrez's body-worn camera for the subject incident.
13. **Exhibit T** to the Declaration of Kevin Gilbert: A true and correct copy of the second video from Sergeant Francisco Alferez's body-worn camera for the subject incident.

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1 The above-referenced videos were taken from the body-worn cameras of the involved
 2 officers and are part of the official investigation and records maintained by the Los
 3 Angeles Police Department.

4 4. I recognize that there is a strong presumption of access in civil cases. *Foltz v.*
 5 *State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). Accordingly, this
 6 Application for seal pertains only to exhibits where I believe there are compelling reasons
 7 to seal. California Evid. Code § 1040; *Jessup v. Superior Court of Santa Clara County*,
 8 151 Cal.App.2d 102, 108 (1957) (“It is not only where a witness requests that his
 9 statement be kept in confidence, but in all cases of crime investigation that the record and
 10 reports are privileged.”); *Youngblood v. Gates*, 112 F.R.D. 342, 345-347 (C.D. Cal. 1985).

11 5. Additionally, these exhibits (all of which are videos or are excerpts from
 12 videos) cannot be redacted. Moreover, as this is a case involving a constitutional
 13 challenge to officer conduct, it will likely be subject to greater public scrutiny. As such,
 14 the protection of witnesses and the involved officers is important to a fair review of the
 15 evidence and security of those involved. I am informed, believe and thereon allege that
 16 officers involved in alleged violation of constitutional rights often receive harsh public
 17 criticism and even death threats after videos are shown publicly. While disclosure not
 18 only may present a serious threat to an officer’s personal life, the defendant officers are
 19 also entitled to a fair and unbiased analysis of the evidence of their actions in this case,
 20 which can be jeopardized by further public disclosure. Consequently, disclosure of these
 21 records and videos is highly likely to “result in the improper use of the material for
 22 scandalous . . . purposes” and therefore should not be publicly disclosed. *Foltz*, 331 F.3d
 23 at 1135, quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995).
 24 Accordingly, good cause and compelling reasons exist in order to best preserve the
 25 evidence and protect the witnesses and individuals involved in this incident.

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1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct. This Declaration is executed this 2nd day of November,
3 2023 in Pleasanton, California.

4 /s/ Kevin E. Gilbert

5 Kevin E. Gilbert

6 Attorney for Defendants

7 OFFICER JESUS MARTINEZ and

8 OFFICER KYLE GRIFFIN
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